

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 73 and 74 of the)	
Commission's Rules to Establish Rules for)	
Digital Low Power Television, Television)	MB Docket No. 03-185
Translator, and Television Booster Stations)	
and to Amend Rules for Digital Class A)	
Television Stations)	
)	

**COMMENTS OF
ARCTIC SLOPE TELEPHONE ASSOCIATION COOPERATIVE, INC.
GRAND RIVER COMMUNICATIONS, INC.
KANOKLA TELEPHONE ASSOCIATION, INC.
PEOPLES TELEPHONE COOPERATIVE, INC.
VALLEY TELEPHONE COOPERATIVE INC.**

Arctic Slope Telephone Association Cooperative, Inc. ("ASTAC"), Grand River Communications, Inc. ("GRCI"), Kanokla Telephone Association, Inc. ("Kanokla"), Peoples Telephone Cooperative, Inc. ("Peoples"), and Valley Telephone Cooperative Inc. ("VTCI") (collectively, "Rural Stakeholders"), by their attorneys, hereby submit these comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Notice* issued in the above-captioned proceeding.¹ The Rural Stakeholders strongly oppose the proposed use of the Lower 700 MHz spectrum for digital low power television operations. The proposal to make Lower 700 MHz spectrum available to new television licensees is particularly ill conceived and will delay, rather than further, the deployment of advanced services to rural America.

¹ *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Notice of Proposed Rulemaking, FCC 03-198 (rel. August 29, 2003) ("*Notice*").

I. BACKGROUND

The Rural Stakeholders are rural telephone companies that have acquired Lower 700 MHz spectrum to provide advanced broadband services to rural America. Each of the Stakeholders is either a current licensee or the winning bidder of C Block Lower 700 MHz channels that were subject to competitive bidding in Auction Nos. 44 and/or 49.² Accordingly, each of the Rural Stakeholders would be directly impacted by the proposals set forth in the Commission's *Notice*. In participating in these auctions, the Rural Stakeholder relied upon the Commission's clearly articulated band clearing policies. While understanding that incumbent analog broadcasters would be entitled to remain on out-of-core channels until completion of the digital transition, no indication was given that these channels would be opened up to new non-incumbent facilities or that what was essentially an analog television transmission service would be expanded to allow non-video subscription services to be provided on these channels for an indefinite period of time. As set forth below, the Rural Stakeholders urge the Commission to refrain from encouraging the development of new digital broadcast facilities outside of the core channels that have been reserved for this purpose.

² ASTAC acquired the C Block for market CMA315 - Alaska 1 in Auction No. 44; GRCI acquired the C Block for markets CMA275 - St. Joseph, MO, CMA412 - Iowa 1 - Mills, CMA413 - Iowa 2 - Union, CMA414 - Iowa 3 - Monroe, CMA418 - Iowa 7 - Audubon, CMA504 - Missouri 1 - Atchison, CMA505 - Missouri 2 - Harrison and CMA507 - Missouri 4 - De Kalb in Auction No. 44, and for markets CMA296-Iowa City, IA, CMA415-Iowa 4 - Muscatine, CMA416-Iowa 5 - Jackson and CMA417-Iowa 6 - Iowa in Auction No. 49; Kanokla acquired the C Block for markets CMA302 - Enid, OK, CMA441 - Kansas 14 - Reno, CMA597 - Oklahoma 2 - Harper and CMA598 - Oklahoma 3 - Grant in Auction No. 49; Peoples acquired the C Block for markets CMA658 - Texas 7 - Fannin, CMA661 - Texas 10 - Navarro, and CMA662 - Texas 11 - Cherokee in Auction No. 44, and for markets CMA206-Longview-Marshall, TX, CMA237 - Tyler, TX and CMA240 - Texarkana, TX - Texarkana, AR in Auction No. 49; VTCI acquired the C Block for markets CMA281-Laredo, TX, CMA669-Texas 18 - Edwards and CMA670-Texas 19 - Atascosa in Auction No. 49. Collectively, the Stakeholders paid approximately \$1.75 million for the right to use this spectrum in these markets.

II. ARGUMENT

In the *Notice*, the Commission proposes allowing existing analog low power, translator and booster stations (collectively “LPTV”) stations to operate on channels 52-59 (698-746 MHz)(“Lower 700 MHz Band”) until the end of the digital transition and to allow digital LPTV stations -- both second channel allocations for existing analog LPTV stations and new stations -- to operate in this band indefinitely, on a secondary basis.³ The Commission also requested comment on allowing digital LPTV to operate on channels 60-69 MHz (746-806 MHz) (“Upper MHz Bands”) on a secondary basis until the end of the digital transition.⁴ The Commission’s stated goals are “to establish a regulatory framework that will hasten the transition of LPTV and TV translator stations to digital operations and to do so in a manner that minimizes disruption of existing service to the consumers served by analog LPTV and translator stations.” While the Rural Stakeholders acknowledge and support the Commission’s efforts to hasten the digital transitions and bring the benefits of new digital services to all Americans, the licensing of new digital LPTV stations in the Lower 700 MHz Band, though well-intentioned, is flawed policy that is inconsistent with prior policies for clearing the Lower 700 MHz Band and will ultimately delay the deployment of advanced new digital services to rural areas, such as those served by the Rural Stakeholders.

Prior to release of the *Notice*, the Commission’s policies regarding the continued use of the Lower 700 MHz Band were clear. In deciding to allow analog LPTV stations to continue to operate in the Lower 700 MHz Band on a secondary basis, the Commission clearly stated that:

³ *Notice*, ¶¶ 28-29.

⁴ *Id.*, ¶ 30.

LPTV operators in the Lower 700 MHz Band must be prepared to cease service once television Channels 52-59 are reclaimed, pursuant to Section 309(j)(14) of the Communications Act, when new licensees (who will have primary status) begin using the band. Congress has recognized – and the Commission has repeatedly noted – that not all LPTV stations can be guaranteed a certain future due to the emerging DTV service, and we do not think it is advisable to defer the ultimate displacement of LPTV operations to the detriment of new primary service licensees in the band. To grant LPTV operations special considerations vis-à-vis new licensees would turn the concept of secondary status upside down and would retard the potential development of new and innovative services.⁵

Based upon this clearly enunciated policy, many companies, including the Rural Stakeholders, spent substantial sums of money to acquire spectrum in Auction Nos. 44 and 49 in order to provide new advanced wireless services to rural America.⁶ Because rural areas like those served by Rural Stakeholders are relatively unencumbered by existing broadcast operations, it is likely that the deployment of 700 MHz services will commence in rural areas even before it begins in most urban areas. Indeed, the Rural Stakeholders, like many similarly situated auction winners, have plans to begin the deployment of new services in their markets within the next 12-24 months, assuming the availability of cost-effective equipment. Thus, the Commission's assumption that Lower 700 MHz spectrum will not be put to use in rural areas in the near future is totally unfounded.⁷

The major impediment the Rural Stakeholders face in deploying new services, however, is the lack of reasonably priced equipment that can be used in the Lower 700 MHz Band. The development and availability of this equipment requires regulatory certainty and the correct regulatory signals to foster financial and vendor investment in and commitment to the development and deployment of 700 MHz equipment. This in turn will lead to a sufficient level

⁵ *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, Report and Order, 17 FCC Rcd 1022 (2002) at ¶ 28.

⁶ Auction Nos. 44 and 49 presented a rare opportunity for small rural telephone company participation by making available 12 MHz of paired spectrum (C Block) on the basis of Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs).

⁷ Notice, ¶ 29.

of deployment to achieve manufacturing economies and to drive equipment prices down. The Commission's steps to accomplish the digital transition within the 2006 deadline envisioned by Congress has begun to establish the climate of regulatory certainty that is critical to the availability both of financing for the deployment of new services and the mass manufacture of reasonably priced equipment for such deployment.

For example, the Commission has taken aggressive steps to implement the digital transition by adopting specific remedial policies covering broadcasters that fail to meet construction deadlines,⁸ allowing broadcast stations to surrender their analog channels and begin digital-only operations well in advance of the end of the transition,⁹ mandating that televisions and certain new consumer electronics products manufactured after a certain date contain digital tuners,¹⁰ adopting requirements to ensure the compatibility of digital consumer products with digital services provided by cable television systems and other multichannel video program distributors,¹¹ and adopting distribution control standards for off-air digital content that is delivered in-the-clear.¹²

⁸ *In the Matter of Remedial Steps For Failure to Comply With Digital Television Construction Schedule*, MM Docket No. 02-113, Report and Order and Memorandum Opinion and Order on Reconsideration, FCC 03-77 (released April 16, 2003).

⁹ *Commonwealth Public Broadcasting Corporation*, (WNVT-TV, Goldvein, Virginia), DA 03-2845, 2003 FCC LEXIS 4919 (rel. September 10, 2003); *Lenfest Broadcasting, LLC*, (WWAC-TV, Atlantic City, New Jersey), 2002 FCC LEXIS 4913 (rel. September 24, 2002).

¹⁰ *Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, Second Report and Order and Second Memorandum Opinion and Order, 17 FCC Rcd 15978 (2002).

¹¹ *Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; Compatibility Between Cable Systems and Consumer Electronics Equipment*, CS Docket No. 97-80 and PP Docket No. 00-67, Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 03-225 (released October 9, 2003) (*Second R&O/Second Further Notice*).

¹² *In re: Digital Broadcast Content Protection*, MB Docket 02-230, Report and Order and Further Notice of Proposed Rulemaking, FCC 03-273 (rel. November 4, 2003).

In one fell swoop, however, the Commission now threatens to undermine the favorable deployment climate that it has been working so hard to create. Not only does the *Notice* provide an indication that the Lower 700 MHz Band may never be cleared of incumbent LPTV stations, it envisions opening this band up to new stations that are not presently operating an analog LPTV facility and allowing those stations to provide advanced non-video subscription services in competition with the services to be offered by Lower 700 MHz auction winners. There is simply no reason to license new stations in the very spectrum the Commission has been trying to clear. That the Commission seeks to minimize concerns by claiming that these LPTV stations will operate on a secondary basis does not ameliorate the negative impact that such a policy reversal will have on financial and equipment markets.

A core channel limitation is feasible and consistent with Congressional mandate. In providing for the eventual analog to digital migration of broadcast television, Congress expressly balanced the needs of LPTV stations by allowing them to convert their facilities to a newly created class of television broadcast station (“Class A” stations) that would entitle them to operate on a primary basis within the core channels.¹³ Had Congress wished to allow LPTV stations to continue to operate in the Upper and Lower 700 MHz Bands beyond the digital transition, it would not have made express provisions for Class A stations and prohibited such stations from operating outside the core channels.

Additionally, to the extent that an LPTV facility is not converted to Class A status, the Commission has proposed a potential solution to the lack of available in-core channel capacity in certain markets. In the *Notice*, the Commission proposes to allow multiple LPTV stations to multiplex their separate programming feeds onto a single output frequency from a common

¹³ 47 U.S.C. § 336(f).

facility.¹⁴ Such multiplexing is a direct benefit of the increasingly sophisticated and spectrum efficient compression technologies that are used to deliver high quality video over a much narrower bandwidth than the 6 MHz television broadcast standard.

To the extent that the Commission allows existing incumbent analog LPTV stations to operate digital systems on out-of-core channels, a policy that the Rural Stakeholders oppose, the Commission should do so only where the incumbent LPTV licensee is able to demonstrate that no in-core channel, including channels available through the use of frequency sharing with existing facilities, is available in a particular market. Under no circumstances should the Commission allow new licensees to operate digital LPTV facilities in the Lower 700 MHz Band.

In addition, the Rural Stakeholders strongly oppose the Commission's proposal to allow digital LPTV stations to provide the full panoply of subscription non-video digital services in addition to some minimal amount of free digital television service. This proposal is particularly troubling and stands the concept of secondary service on its head. In its zeal to support a new digital LPTV service, the Commission is proposing to essentially give away for free the same spectrum that the Rural Stakeholders and other similarly situated parties spent substantial sums of money to acquire through a competitive bidding process. This will give the "secondary" service providers substantial cost advantages in providing competitive services. The Commission's action will also give the secondary services "first mover" advantages in particular markets insofar as it retards the ability of the Rural Stakeholders and other similarly situated auction winners to deploy new services in a timely fashion. Accordingly, the Commission should limit the deployment of digital LPTV stations to the core broadcast channels.

¹⁴ Notice, ¶ 16.

There is simply no reason to allow any digital LPTV station to offer non-video subscription services outside of the core channels.¹⁵ To allow LPTV stations to provide non-video subscription services goes far beyond the Commission's stated goal of fostering the digital transition in rural areas that lack coverage by full power broadcast stations. Restricting digital LPTV stations to the provision of video programming will be sufficient to ensure that people in digital LPTV coverage areas who do not otherwise receive their broadcast programming from cable television or satellite will have an incentive to purchase digital televisions and other consumer electronics products. It is simply unnecessary and inconsistent with the secondary nature of LPTV service to provide digital LPTV stations with free use of non-core spectrum to provide subscription digital services in competition with existing and newly emerging wireless services that were required to pay for their spectrum. Additionally, such a prohibition will provide an incentive for stations operating outside of the core channels to relocate out of the Upper and/or Lower 700 MHz Bands as quickly as possible and thereby facilitate a rapid digital transition consistent with the Commission's longstanding policies.

III. CONCLUSION

Based on the foregoing, the Rural Stakeholders respectfully request that the Commission not authorize digital LPTV stations in out-of-core channels. To the extent, however, that the Commission allows existing incumbent LPTV stations to commence digital operations on out-of-core channels, it should do so only where they are able to demonstrate that no in-core channels, including channels available through the use of frequency sharing, are available in a particular market. New stations should not be authorized on out-of-core channels under any circumstances.

¹⁵ Within the core channels, the Rural Stakeholders see no reason to deny digital LPTV stations the same service flexibility as their full service counterparts. In fact, allowing digital LPTV stations greater flexibility within the core channels will provide additional incentives for existing LPTV stations to clear the Upper and Lower 700MHz Bands.

In cases where out-of-core operation is permitted, such operation should be limited to the provision of non-subscription video services only.

Respectfully submitted,

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